IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

APPEAL FROM ORDER NO.1077 OF 2004
IN
NOTICE OF MOTION NO.1138 OF 2004
IN
S.C. SUIT NO.1371 OF 2004

Narendrabhai Jagjivanbhai Kagadada ... Appellant

V/s.

Jagdish G.Thanki & anr. ... Respondents

Mr.P.A. Sawant for Appellant
Mr.R.A. Thorat for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **DECEMBER 22, 2004**

P.C.:

. Notice of Motion has been dismissed by the trial Court. The appellant claimed that he was a licensee of Respondent No.1 in respect of room No.D-43. Respondent No.2 claims to be the owner of D-43 and has contended that she has never entered into any agreement or licence with the appellant at any point of time. In fact there is a pleading in the plaint itself that Respondent No.2 called upon the appellant to vacate the premises D-43 and hand over to her vacant and peaceful possession of the same. Admittedly, the licence has expired in February, 2004. The suit was filed by the plaintiff without making Respondent No.2 a party.

2. I see no reason to interfere with the findings of the trial Court. Apparently, prima facie, the suit itself may not be maintainable in the trial Court in view of the judgment of this Court in *Nagin Mansukhlal Dagli v/s Haribhai Manibhai Patel,* **AIR 1980 BOMBAY 123** and *Eknath Vithal Ogale v/s. Mansukhlal Dhanraj Jain,* **1988 (2) Bom.C.R. 9** where this Court has held that the suits in respect of the relations between licensor and licensee would be maintainable only in the Small Causes Court and not the City Civil Court. However, without going into the merits of this submission made on behalf of Respondent No.2, I see no reason to interfere with the order of the trial Court.

3. Appeal from Order is dismissed.

4. Mr.Sawant, learned Counsel appearing for the Appellant, states that he will withdraw the suit by 10.1.2005 and file proceedings before the appropriate forum. However, he urges that the Appellant should not be dispossessed for a period of two weeks thereafter in order that the appellant may file proceedings before the Small Causes Court. I see no reason to disagree with this request made by the appellant. Accordingly, the appellant shall not be dispossessed of the suit premises for a period of two weeks from the date of the

withdrawal of the Suit. In the meantime, the appellant will not encumber or create any third party interest or alienate the property in any manner whatsoever.

5. In view of the Appeal from Order being disposed of, nothing survives in Civil Application No.1526 of 2004 and the same is disposed of accordingly.